

PUBLIC LAW BOARD NO. 5850

**Award No.
Case No. 246**

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

**(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)**

STATEMENT OF CLAIM:

- 1. The Carrier violated the Agreement on August 29, 2003, when it issued the Claimant, Ms. D. J. Maley, a 30-day record Book suspension, 1-year probation, and suspended her foreman seniority for 1-year, for allegedly violating Maintenance of Way Operating Rule, 6.3.2, Protection on Other than Main Track.**
- 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately restore Claimant's foreman seniority, remove any mention of this incident from her personal record, and make her whole for all wages lost account of this violation.**

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant, a Section Foreman, was ramrodding a crew repairing track in the Fort Madison Yards. Claimant was charged with failure to secure track 11 switch on the East End. As a result, the yardswitcher entered track 11. No one was injured, nor was any equipment damaged, but the Carrier believed Claimant was derelict in her responsibilities by not locking and tagging the east switch on track 11 or at least insuring that it was done.

Claimant's crew included three Assistant Foremen with an Assistant Roadmaster on the scene. The crew had machine work to do on track 12 so the Roadmaster instructed Claimant to take tracks 11, 12 and 13 out of service. Tracks 11 and 13 could be fouled by the equipment working on 12. Additionally, track 11 was to be used as a run around track; when a unit on track 12 reached the end of the track, they moved to track 11 and back onto 12. All the track entrances were protected by locking and tagging with the exception of the east switch on track 11.

Following instructions, Claimant did take tracks 11, 12 and 13 out of service. She also advised the Dispatcher that said tracks were being taken out of service figuring that the Dispatcher would so advise the yard crew who reported for work around 12 noon.

The Dispatcher apparently did not advise the yardswitch crew that the tracks were out of service. Before this incident with the engine on track 11, Claimant was instructed to report to the Depot to do some computer work that needed correcting.

It turns out an Assistant Foreman was left with the east switch to allow the machinery to move around, but when the last machine cleared, he rode it to a stop on track 12 leaving track 11 open to whomever had need to use the track.

The Assistant Foreman is required to know the Rules as well as the Foreman, and surely the Assistant Roadmaster is up on the Rules. Why didn't the Assistant Foreman who rode the last machine out of track 11 into track 12 lock and tag the switch or spike it if he had no lock? Where was the Assistant Roadmaster when he was on the scene?

Perhaps since Claimant had been advised to take tracks 11, 12 and 13 out of service and then advised this had been accomplished, everyone became complacent, but one question remains. If Claimant was instructed to go to the Depot for some

computer work and was not on the scene when the last unit moved off 11 to 12, why didn't the Assistant Foreman either lock or spike and tag the switch. Why did he believe that since he was not specifically told to do so, he could simply ignore the Rules.

This Board is fully aware of the seriousness of leaving tracks unprotected. The potential is as great as anyone could imagine. Thus, each employee has to lookout not only for themselves but for each other. No one would have been disciplined for locking the track even if not specifically instructed to do so.

Three Assistant Foremen and an Assistant Roadmaster were on the scene. No one stepped forward to lock the track, yet each knew the Rule and should have acted particularly when at least one Assistant Foreman and the Assistant Roadmaster knew Claimant was not on the scene when the last machine moved off track 11 to 12, yet no one but Claimant was disciplined.

Claimant's record with the Carrier since she hired out in March, 1998, has been without blemish. It is this Board's determination the discipline received was unduly harsh. The 30 day record book suspension with one year's probation remains. The seniority rights as a Foreman that were suspended are to be restored and she is to be paid the difference between what she has earned after her rights were suspended until those rights are reinstated.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the

award effective on or before 30 days following the date the award is adopted.

Robert L. Hicks
Robert L. Hicks, Chairman & Neutral Member

R. B. Wehrli
Rick B. Wehrli, Labor Member

William L. Yeck
William L. Yeck, Carrier Member

Dated: MAY 7, 2004